

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2005
U.S. DIS
DISTRICT

Civil Action
No: 04-11940-PBS

STEPHEN JOHN CASEY, SR.,
Petitioner, Appellant

v.

STEVEN O'BRIEN,
Respondent, Appellees

The petition for Writ of Habeas Corpus filed on: September 13, 2004

PETITIONER'S BRIEF

Stephen John Casey, Sr., Pro-Se
An Inmate at: The North Central Correctional Institute at...
500 Colony Road
P.O. Box 466
Gardner, Massachusetts 01440

January 27, 2005

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PLEASE NOTE: It is the Petitioner's intent for this court to read and include into, as part of the Petitioner's brief the Brief of Appellee/Cross - Appellant...

The Petitioner to save time and reproduction costs of obtaining such, points out and uses such copy which was/is included in the Respondent's Motion to Dismiss, Appendix, which is marked as Exhibit E in Respondents Motion, and Petitioner's instant Brief.

TABLE OF AUTHORITIES

Petitioner notes to save time and cost [H]e reffers to the Respondent's Exhibit E, marked as Appellee/Cross-Appellant, along with [H]is own Ehibit A (Petitioner Appendix Page 16), all cases sited in such, and the following:

Commonwealth v. Casey, 442 Mass. 1,.....	2
Witte v. United States, 515 US 389,.....	3
Black Law's Dictionary.....	8
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Comm. v. Casey (above).....	11
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ISSUES PRESENTED

The petitioner notes here, that due to his confinement at the North Central Correctional Institute, at Gardner, Massachusetts, and conditions and policies of such, the only copy of the Petition that was filed that Petitioner had, has been mis-placed or taken during a routine shakedown, Therefore the Petitioner states that the only issues the Petitioner will try to raise in this Brief, are those that were presented to and denied by the Massachusetts Supreme Court (SJC), and Petitioner further states that all arguments are interrelated and connected issues, and remain the same as were in front of the SJC.

- I. Was the Trial Court's reversal of the Defendant's convictions and ordering of a new trial supported by the alternate juror's presence in the jury's deliberations?
- II. Did the complaintant's attempts to influence the jury when he knew they were leaning towards acquittal by performing for them and speaking to an alternate prejudice the Defendant and violate his Constitutional Rights to a fair trial under Article 12 of the Massachusetts Declaration of Rights and the Sixth and Fourteenth Amendments of the United States Constitution?

III. Did the Commonwealth's evidence rely on a complaintant with a strong motive to fabricate and who's conflicting stories reflect a lack of truthfulness (Perjury), as well as the possibility that he suffers from a bipolar disorder like his brother (step)?

IV. Did Double Jeopardy attach? Was perjured testimony relied on to convict? And is Petitioner subject to ex post facto , and the Collateral Legal Consequence claims?

BACKGROUND

The Habeas Corpus Petition (the "petitioner") of:

STEPHEN JOHN CASEY, SR.

The Petitioner is currently an inmate at the North Central Correctional Institute, at Gardner, Massachusetts. On December 17, 1998, [H]e was arraigned in New Bedford, Massachusetts (the Bristol County Superior Court), after a S.A.I.N. interview was done at the New Bedford Child and Family Services Clinic. As a result of that interview, Bristol County came forth with indictments charging the Petitioner with:

**Rape of a Child w/Force, and
(1) indecent Assault & Battery on a
Child under Fourteen**

Bristol County indictments charged on "differ times on or about, December 1, 1990 to August 31, 1998" On or about the same time the petitioner was also charged in the Brockton Superior Court (Plymouth County), with information taken from the S.A.I.N. interview mentioned above. The charged time period for Plymouth County was, "on differ times between January, 1991 to September, 1998, and charges were:

**Rape and Abuse of a Child,
(2) Indecent Assault & Battery under 14,
(1) Indecent Assault & Battery after 14.**

The victim has been identified in several documents as the nephew of the Petitioner. The Petitioner had the same Attorney in both counties, and both cases, along with post trial motions, were heard by the Honorable Judge Richard Chin.

The Petitioner was convicted on October 20, 1999 in the Bristol County trial, before a jury with Chin,J. presiding during the entire trial which was conducted on October 14, 15, 19, and 20, 1999. The Petitioner was convicted on Indictment # 9873CR0421, of the lesser offence of Rape and abuse of a child, and indecent assault and battery on a child under the age of fourteen. (G.L. c.265 §23- and c. 265 §13B). The petitioner filed a notice of appeal on November 10, 1999.

On February 25, 2000, four months after [H]is conviction in Bristol County, the petitioner plead guilty in Plymouth County (Brockton Superior Court), with Chin,J. presiding to the four indictments from Plymouth. The Petitioner filed a motion to withdraw [H]is guilty pleas in Plymouth on Apr.17, 2003. The motion was heard on May 23, 2003 by Chin,J. at the same time and along with a new trial motion for Bristol's conviction(s). Petitioner's motion for a new trial was allowed on July 22, 2003 and [H]is request to withdraw [H]is guilty pleas in Plymouth were denied. Commonwealth appealed the allowance of a new trial, the Petitioner appealed the Plymouth denial, along with other issues not reached.

see "Respondent's motion to dismiss
Civil Action # 04-11940-PBS (Appendix)

The Appeal was transferred to the Supreme Judicial Court of Massachusetts, (the "SJC"), on it's own motion, January 23, 2004. In a June 3, 2004 decision, the SJC vacated the Superior Court's Order allowing a new trial and reinstated the Petitioner's convictions.

Casey, 442 Mass. 1, 809 N.E. 2d at 982

The Petitioner filed the instant Petition on September 13, 2004.

ARGUMENT

1. Right to be free from double jeopardy was violated:

Petitioner will refer to Appendix submitted in RESPONDENT'S APPENDIX, ACCOMPANING HIS MOTION TO DISMISS, IT IS THE Petitioner's believe that this will save time, and cost and allow for a more efficient petition review. Petitioner will mark as such, (R-Exhibits A-G), and refer to [H]is own Appendix as such, (P-Exhibits A...).

The Double Peopardy Clause provides: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb..." Although this may be generally understood to preclude a second prosecution for the same offense, (which the Petitioner argues seems relevant in this case), the Courts have also interpreted this prohibition to prevent the State from punishing twice or attempting a second time to punish criminally for the same offense.

**Witte v. United States, 515 US 389, 396,
132 L Ed 351, 115 S Ct. 2199 (1995)**

The Petitioner will now point to:

**Petitioner's Exhibit A,
Massachusetts Supreme Court oral
arguments (April 5, 2004)**

(S.J.C.) [Page 3, line 12- 17], where it states; "There are two cases consolidated here this morning, one arising from the Defendant's conviction in Bristol County, for raping a child, and indecent assault and battery on a person under fourteen. The other is from the Defendant's guilty plea to the same charges in Plymouth County." The Petitioner wishes to point out a pattern of "same charges" throughout different Briefs and Court transcripts all through this instant case, Therefore the Petitioner claims the elements for Double Jeopardy have been met. Petitioner now points to;

**Petitioner'S Exhibit A,
Defendant's Attorney Lewis...**

Page 14, line 19...Mr. Lewis Yes. May I please the Court? I represent Mr. Casey, on both of these cases. Page 27, line 4 ... (Lewis), " I'm going to turn to the, if there are no more questions, I'll turn to the Plymouth matter."

**Petitioner's Exhibit A,
The Court (S.J.C.)**

Page 27,
line 12-14,... "um, if we conclude that the New Trial should not have been granted in the Bristol case, then this second case would become moot. Is that correct?".

**Petitioner's Exhibit A,
Defendant's Attorney Lewis...**

(Lewis), "I think procedurally this is a unique case, just because of the interrelationship of the two cases. There virtually identical cases. I mean, it's the same judge, the trial lawyer, common charges, common complaintant, very similar.

Page 27, line 19..." ...in this case it ends up, the trial court ends up having one hearing for both cases, and is issuing one Order for both cases."

The Petitioner has noticed in the Respondent's Motin to Dismiss, [page 7], they argued the "Petitioner" has not exhausted [H]is burden (Petition ¶12.B.) his right to be free from Double Peopardy. Petitioner argues [H]e has been unable to argue before any Court, and has been instead defended by Attorneys, but nevertheless, the Records, Briefs, and Transcripts speak for themselves and Double Jeopardy seems apparent throughout. Therefore the Petitioner now argues the S.J.C. had the clear facts and issues before them and a Defendant/Petitioner should not had been needed there to point these issues out. As a result the highest Court has had there chance, now the petitioner has filed the Habeas Corpus. The Petitioner now goes on to argue that the inferior Courts had these issues before them and records show just that, namely:

**Respondent's Appendix Exhibit E,
(Brief of Appellee/Cross-Appellant)**

Page 1, A. Introduction, "...the two cases are closely related." " The cases share the same defendant, an alleged complainant and crimes charged.

"The same defense Counsel represented the Defendant in each trial case. The same judge presided over both cases as well as the post trial motions in each: there is a single transcript from the combined post trial hearing. The sentences for the two cases are indetical and are running concurrent.".

Page 2, " The close relationship between the cases means that what occurred at the Bristol Trial - the first case to be resolved, directly influenced the course of the second case, (Plymouty). The Bristol facts place the Plymouth issue in context.".

Now Petitioner points to [H]is indictments...

**Respondent's Exhibit E,
(Attachment page 4)**

[B]ristol
Indictments - "...Differs times from on about December 1, 1990 to on or about August 31, 1998..." (Attachment page 23), [P]lymouth Indictments, "... in or between January 1991 and September , 1998."

Now Petitioner points to [H]is Affidavit:

**Respondent's Exhibit E,
(Attachment page 30, Affidavit)**

#2. " On February 25, 2000, I plead guilty to several charges pending against me in Plymouth Superior Court. The Plymouth charges involved almost exactly the same alleged offenses, victim and time period as the Bristol County convictions.".

#3. " After pleading guilty in Plymouth County, Judge Chin

sentenced me to an identical 4-6 year sentence and probation period I recieved in Bristol County. Judge Chin ran the Plymouth sentence and probation concurrent with the Bristol sentence and probation. I also did not believe that I recieved a fair trial in Bristol County and therefore did not see the point of going through another trial. I watched A.V. tell different versions of [H]is story to the department, to the police, at Probable Cause hearing, and then at trial without [H]im being charged with perjury. I was never informed of the possibility of an Alford plea...".

Petitioner argues that the perjury just mentioned leads to [H]is petition claim " that circumstances of [H]is trial and convictin led to a situaction where [H]e was unlawfully induced to plead in another case. (Petitioner will return to that argument later in this Brief.

(Respondent's Motin to Dismiss...
page 7...)

Now Petitioner in his continued argument will point to the record at:

Respondent's Exhibit E,
(Attachment page 119)

This document is the Memorandum of Decission and Order on Defendant's Motion for New Trial and Motion to Vacate a Previously Entered Guilty Plea, (by Justice of the Superior Court , Richard J. Chin). Petitioner wishes to note, at the top left corner of this document how it is marked: Plymouth and Bristol, ss.,

and argues that taken as a whole, whereas it seems even the Courts could not separate and rule singly on these two cases many of the times, not only should Double Jeopardy begin to attach, but any Constitutional Right to a fair trial is next to impossible. The Petitioner further argues the only commonsense reason for the Commonwealth to not have ran these cases as one, would be to support an otherwise weak case and give [T]hem two bites of the apple. Petitioner's right to have a defense at trial was impossible due to duplicitous charges, and as such a choice of accepting a plea, or going through another trial amounted to a "unlawfully induced plea".

ARGUMENT

Did perjurious testimony result in circumstances (at trial), and conviction lead to a situation where [H]e was unlawfully induced to plead guilty in another case?

Perjury - The act or an instance of a person's deliberately making false or misleading statements while under oath.

see Black's Law Dictionary
8th Edition

"Perjury - Whoever, being lawfully required to depose the

truth in a judicial proceeding or in a proceeding in a course of justice willfully swears or affirms falsely in a matter material to the issue or point in question, or whoever, being required by law to take oath or affirm action, willfully swears or affirms falsely in a matter relative to which such oath or affirmation is required, shall be guilty of perjury.

M.G.L.A. c.268 Z1

(also see 18 USCS §1621 Perjury)

The Petitioner is relying on what is in the Record, not the Respondent's view of it, that must control any decision in this matter. The prohibition on facts found outside the record is designed to ensure the reliability of the evidence before the Court. Though the Respondent's "Motion to Dismiss", argues I'm raising issues the Massachusetts Courts have not had the opportunity to hear or address, the Petitioner argues that all issues now being raised were before the Court every step of proceedings, or happened in or during the course of the (Bristol) Trial, and have since either been argued by the Defendant/Petitioner, or were a clear part, interrelated in arguments in relations to appeals related in this case, and as such are included in transcripts and briefs, which both Courts rely on for information reported by or testified to by the same main witness. Petitioner argues now before this Court that all issues raised in this Petition, or any issue in previous appeals in said instant case are affected by said same perjurious testimony(s).

Petitioner now directs the Courts attention to:

**Respondent's Exhibit E ,
(Attachment page 56)
Transcripts of Probable Cause
Hearing**

Page 56, Line 4, Witness/victim states for first time under oath, the first time [H]e remembers anything happening was at nine years old. (Page 63), Again [H]e states first time these incidents happened was at nine years of age. (Page 65) [H]e states the last time anything happened was when [H]e was thirteen years old. ON (page 66) [H]e denies ever telling police or anyone that this stuff was happening to [H]im since [H]e was one years old. [H]e denies telling police [i]t started when [H]e was three years old, yet [H]e did recall having the meetings. (on page 67), [H]e states they(my wife and I), lived on Holly Street, yet [H]e was not yet born to know that, and my wife and I had moved out of "Holly Street", before [H]e was born .

Petitioner now points to the Bristol Trial transcripts, which the Petitioner does not have in there complete package, and there would be a hardship for [H]im to ontain such, in time to include entire transcripts onto Petitioner's Appendix Brief, in the alternative Petitioner will refer to parts included in the Respondent's motion to Dismiss, and now directs the Court to:

**Respondent's Appendix Exhibit E,
(Brief of Appellee/Cross-Appellant)**

Page 7, (D)- "The complainant stated at trial that he had been six years old when the first incident with the defendant occurred.

[t2:121, in. 17], [H]e denied saying at other times that he was one, three, or nine when the abuse began." The Petitioner argues that in the S.J.C. Decission, on page 8 (footnote3) the Court states; " In his motion for a new trial, the Defendant stated that the victim made inconsistent statements..."

Comm. v. Casey
442 Mass.1, 8 (2004)

Petitioner

argues that that would suggest a shading of facts (Respondent's Motion to Dismiss, page 7..."SJC [s]haded facts in [it's] ruling to imply truths that were not in the record"), and that the record meets the requirement for perjury under M.G.L.A., and can not be brushed off as meer "inconsistent statements". Also, on page 8 of the SJC Decission, the Court states (#4) "The defendant asserts that "the Commonwealth's evidence relied on a [victim] with a strong motive to fabricate and [whose] conflicting stories reflected a lack of truthfulness." The petitioner again states it would seem this is shding facts, when perjured testimony is refered to as "conflicting stories" or " reflecting a lack of trurhfulness", when does non-truth become perjury? The Petitioner also argues that in all reprts, hearings, and trial, the victim never told the same story, or statement of fact twice. The Petitioner argues this would take away any expectations of a fair trial in any County , nonetheless a continuing County where the main witness the Petitioner would constitutionally have a right to face was now use to changing st0ries under oath at will.

Though credibility is a issue for the jury to decide

**Kettleman v. Atkins,
229 Mass. 89, 92 (1918)**

the Petitioner
argues there has to be a line where credibility cross over and becomes a
incident(s) of perjury, or any type of story could be told or testified to a
unsuspecting jury, and no crime would be committed if the [J]ury did not catch
it?

The Petitioner prays this Honorable Court will allow the Petitioner's Appellee /Cross- Appellant Brief...

**Respondent's Exhibit E,
Appendix**

to become a direct part of this brief to save time and cost in duplicating the same arguments the Petitioner wishes to point out. All other interrelated issues and arguments are either interconnected to said brief, and Petitioner's included Appendix brief of SJC oral arguments and decciosn resulting there from. The petitioner argues that when all such included documents are taken as a whole and given there fair weight, the issues the Petitioner raises of Double Jeopardy, Perjured testimony, ex post facto, and collateral legal consequence apply.

The Petitioner argues that there was a clear showing that the jury was exposed to extraneous matter, and a mis-trial as the trial judge so ordered was the only fair remedy.

The Petitioner argues the conduct of the victim at a criminal trial in gesturing and smiling to jurors, the limit of what we did know, did amount to an unwarranted intrusion constituting an extraneous influence on the jury. Though the Petitioner notes it is mentioned in several documents of the victim appearing to look much younger than his actual age, we cannot pry into the minds of the jurors to speculate on how the victim "appeared", but must instead rely on the facts that are before us on the record. The victim/ witness was well over having obtained the age of fourteen, and had taking a special test to gain entrance into the very Vocational High School, [H]e himself testified he was doing good in grades. Therefore a year later at trial this very same witness had now obtained the age of fifteen and was well into his second year of Vocational Trade School. The Petitioner argues that when the SJC uses statements such as, "...which could have been viewed as nothing more than innocuous childlike behavior..." they [SJC] have done nothing less than shade the facts to imply what is not a part of the record. Petitioner argues that this allowance of perjury, by excusing such as a "child" further takes from the Petitioner available grounds for defence.

Commonwealth v. Saferian,
366 Mass. 89, 96 (1974)

The petitioner further argues that since his sentence, the Massachusetts Legislature has added laws (ex post facto) that add to his ~~sence~~ order of having to register as a sex offense
sentence

der by now so ordering Petitioner under law to pay a register fee of \$75.00, and thereafter every year a additional re-registering update fee of \$75.00. The Petitioner argues that the Civil Commitment scheme is in fact punishment under;

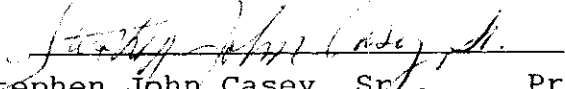
Kansas v. Hendricks
138 L Ed 1069

and that

the Massachusetts Legislator has added punishment since the crimes the Petitioner argues against were committed and that from which [H]e was convicted. There is no way to argue the temporary holding of the Petitioner (to appeal) can be voided with out holding of such, in a Massachusetts Prison, disguised as a treatment center, with no option of bail, which the Petitioner argues is additinal punishment. The average length of Civil Commitments in Massachusetts is 17 years, and any safeguard of yearly reviews would as such point to a punishment shceme and not civil for treatment. The psychological evidence upon which SDP designations typically rest is not reliably predictive. The Massachusetts Legislator changed the group of intended target by the recent inclusion of any crime where the totality of the facts suggest a sexual motivation. Though the United States Supreme Court has often ruled civil schemes to be constitutional, by so changing the said target group opens new issues of constitutuionallity, and whether indeed the act is now additional punishment.

IN CONCUSION, AND RELIEF SOUGHT, FOR ALL THE FOROING REASONS the Petitioner agues that [H]e is indeed being held against [H]is Constitutional Rights, and is continued with additional punishment in violation of ex post facto, along with convictions which rely on Double Jeopardy and perjured testimony to hold. Therefore the Petitioner praya this Court will Order [H]is imediate release, and vacate [H]is convictin(s).

Respectfully Submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above brief was served on January, 2005 by first class mail, postage prepaid, upon:

Randall E. Ravitz (BBO# 643381)
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DATED Jan 26, 2005

By Stephen J. Casey, SR.
Pro-Se

P E T I T I O N E R ' S

EXHIBIT A